<u>TABLE OF CONTENTS</u>

IV 2418546



OFFICE OF THE SHERIFF



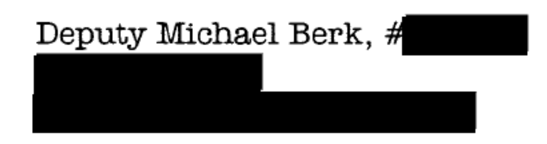
COUNTY OF LOS ANGELES

HALL OF JUSTICE

ALEX VILLANUEVA, SHERIFF

November 22, 2019

Deputy Michael Berk, #[redacted]



[redacted]

Dear Deputy Berk:

LETTER OF INTENT

Pursuant to Rule 18.01 of the Los Angeles County Civil Service Rules, you are hereby notified that it is the intention of the Sheriff's Department to suspend you without pay from your position of Deputy Sheriff, Item No. 2708A, with this Department, for up to thirty (30) days beyond judgment of a criminal charge pending against you.

The investigation being conducted under IAB file number IV 2418546 may result in further administrative proceedings.

On November 19, 2019, as a result of an investigation conducted by Los Angeles County Sheriff's Department, eight (8) Felony count(s) were filed against you in Los Angeles County Superior Court, by the District Attorney's Office, Case # BA482714. The complaint states as follows:

****COUNT 1****

> On or about September 1, 2016, in the County of Los Angeles, the crime of PERJURY BY DECLARATION, in violation of PENAL CODE SECTION 118(a), a Felony, was committed by MICHAEL BERK, who did unlawfully, under penalty of perjury, declare as true, that which was known to be false, to wit: no insurance, citation #A133376.

COUNT 2

On or about September 1, 2016, in the County of Los Angeles, the crime of FILING A FALSE REPORT, in violation of PENAL CODE SECTION 118.1, a Felony, was committed by MICHAEL BERK, who did, as a peace officer, file a report regarding the commission and investigation of a crime with the agency which employed the defendant, and knowingly and intentionally included a statement and statements regarding a material matter which the defendant knew to be false.

COUNT 3

On or about September 27, 2016, in the County of Los Angeles, the crime of PERJURY BY DECLARATION, in violation of PENAL CODE SECTION 118(a), a Felony, was committed by MICHAEL BERK, who did unlawfully, under penalty of perjury, declare as true, that which was known to be false, to wit: no insurance, citation #A134038.

COUNT 4

On or about September 27, 2016, in the County of Los Angeles, the crime of FILING A FALSE REPORT, in violation of PENAL CODE SECTION 118.1, a Felony, was committed by MICHAEL BERK, who did, as a peace officer, file a report regarding the commission and investigation of a crime with the agency which employed the defendant, and knowingly and intentionally included a statement and statements regarding a material matter which the defendant knew to be false.

COUNT 5

On or about October 1, 2016, in the County of Los Angeles, the crime of PERJURY BY DECLARATION, in violation of PENAL CODE SECTION 118(a), a Felony, was committed by MICHAEL BERK, who did unlawfully, under penalty of perjury, declare as true,

that which was known to be false, to wit: no insurance, citation #134177.

COUNT 6

On or about October 1, 2016, in the County of Los Angeles, the crime of FILING A FALSE REPORT, in violation of PENAL CODE SECTION 118.1, a Felony, was committed by MICHAEL BERK, who did, as a peace officer, file a report regarding the commission and investigation of a crime with the agency which employed the defendant, and knowingly and intentionally included a statement and statements regarding a material matter which the defendant knew to be false.

COUNT 7

On or about October 21, 2016, in the County of Los Angeles, the crime of PERJURY BY DECLARATION, in violation of PENAL CODE SECTION 118(a), a Felony, was committed by MICHAEL BERK, who did unlawfully, under penalty of perjury, declare as true, that which was known to be false, to wit: no current proof of insurance, citation #134792.

COUNT 8

On or about October 21, 2016, in the County of Los Angeles, the crime of FILING A FALSE REPORT, in violation of PENAL CODE SECTION 118.1, a Felony, was committed by MICHAEL BERK, who did, as a peace officer, file a report regarding the commission and investigation of a crime with the agency which employed the defendant, and knowingly and intentionally included a statement and statements regarding a material matter which the defendant knew to be false.

You may respond to the intended action orally or in writing. In the event that you choose to respond orally to these charges, you have already been scheduled to meet with Chief Lawrence Del Mese on December 20, 2019, at 1030 hours, in his office, which is located at 211 West Temple Street, Los Angeles, California 90012. If you are unable to appear at the scheduled time and wish to schedule some other time prior to December 20, 2019, for your oral response, please call Chief Del Mese's secretary at [redacted], for an appointment.

If you choose to respond in writing, please call Chief Del Mese's secretary to cancel your scheduled appointment, and send your response to the facts contained in this letter to Chief Del Mese's office by no later than December 17, 2019.

Pursuant to Rule 16.01 of the Los Angeles County Civil Service Rules, effective immediately, you are on paid administrative leave, which will continue during the fifteen (15) business days you have to respond to the intended action or until the conclusion of your pre-suspension hearing.

Failure to respond to this Letter of Intent within fifteen (15) business days will be considered a waiver of your right to respond and will result in the imposition of the suspension indicated herein.

The decision to proceed with this action was based solely upon the criminal charges enumerated in this letter. There are no additional materials for review. Should you have any questions regarding this action, you may contact the Internal Affairs Bureau at (323) 890-5300.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

ALEX VILLANUEVA, SHERIFF

Kelly M. Porowski, Captain
Internal Affairs Bureau

KMP:DME:de

(Professional Standards Division – Internal Affairs Bureau)

IAB FILE NO. IV 2418546

Attachments

c: Lawrence Del Mese, Chief, North Patrol Division
Georgette Burgess, Departmental Employee Relations Representative, Employee Relations Unit
Charna Toldson, Operations Assistant I, Internal Affairs Bureau
Vince Vasquez, Operations Assistant I, Advocacy Unit

INTERNAL AFFAIRS BUREAU
INVESTIGATIVE SUMMARY
IV 2418546

SUBJECT: **MICHAEL BERK, DEPUTY ([redacted]), #[redacted]**

DATE(S) OF INCIDENT(S): **APRIL 21, 2016 THROUGH NOVEMBER 30, 2016**

ALLEGATIONS:

It was alleged that while on duty at the Santa Clarita Valley Station, Subject Michael Berk knowingly issued falsified traffic citations to motorists who worked as, or were related to, members of law enforcement.

SYNOPSIS:

On Friday, November 30, 2016, Santa Clarita Valley Station Captain Roosevelt Johnson received a telephone call from Los Angeles Police Department Deputy Chief John Peters who told him he received information that personnel of the Los Angeles Police Department, who reside in the Santa Clarita Valley area, had been stopped for various traffic violations by Santa Clarita Valley Station motor deputies. The off-duty personnel were told they were initially stopped for excessive speed and subsequently given citations for no insurance, even though the officers had proof of insurance in their vehicles.

Captain Johnson received the names of the persons cited, the dates the alleged incidents occurred, and the names of the deputies who issued the citations. Subject Berk was one of the issuing deputies listed on the citations. Captain Johnson instructed Santa Clarita Valley Station Traffic Sergeant Scott Shoemaker to conduct a supervisory inquiry regarding the allegations.

Based on the information revealed through Sergeant Shoemaker's inquiry, Captain Johnson telephoned the Department's Internal Criminal Investigations Bureau (ICIB) and recommended a criminal investigation be initiated on Subject Berk regarding the criminal charge section 118.1 of the California Penal Code – Police Officers Filing False Reports.

ICIB investigators conducted an investigation regarding the allegations and identified 16 witnesses and victims who were cited by Subject Berk, for section 16028(a) of the California Vehicle Code – No Proof of Insurance, between the indicated dates. Those

identified were either law enforcement officers, a spouse of a law enforcement officer, or employed by a law enforcement agency.

IAB NOTE: A detailed account of the investigation conducted by ICIB investigators was submitted with this investigative report **[EXHIBIT A – ICIB Case Book]** and **[EXHIBIT B – ICIB Addendum]**.

At the direction of Subject Berk's attorney, Subject Berk declined to be interviewed. Therefore, no statements were obtained from Subject Berk **[Exhibit A, ICIB Case Book, Page 265]**.

ICIB investigators spoke with Witness [redacted], a deputy with the Los Angeles County Sheriff's Department. He said he was stopped by Subject Berk for allegedly speeding on April 21, 2016 but was subsequently cited for no current proof of insurance.

Subject Berk told Witness [redacted] he was stopped for going over the 45 miles-per-hour speed limit. He asked Witness [redacted] for his driver's license, registration and proof of insurance. After Witness [redacted] provided the requested documents, Subject Berk returned to his motorcycle. Subject Berk returned back to Witness [redacted] and asked where he worked. Witness [redacted] told Subject Berk where he worked as a custody deputy. Subject Berk advised Witness [redacted] his insurance card was expired. Witness [redacted] said he knew his insurance was current because he paid for it every six (6) months. Nonetheless, Witness [redacted] was cited for no current proof of insurance.

IAB NOTE: Refer to Exhibit A for audio recording of Witness [redacted]'s interview with ICIB investigators **[ICIB Casebook, Attachment #4]** and a photocopy of the citation issued **[ICIB Casebook, Pages 102-103]**. There were no transcripts for the interview.

ICIB investigators spoke with Witness [redacted], a deputy with the Los Angeles County Sheriff's Department. He said he was stopped by Subject Berk for allegedly speeding on August 3, 2016 but was subsequently cited for having no current proof of insurance.

Witness [redacted] knew he had a weapon in his vehicle so he advised Subject Berk he was a deputy. Witness [redacted] said even though his insurance was current, he did not have his insurance card in the vehicle at the time of traffic stop. After asking where Witness [redacted] worked, Subject Berk took Witness [redacted]' driver's license and cited him for no current proof of insurance.

IAB NOTE: Refer to Exhibit A for an audio recording of Witness [redacted]' interview with ICIB investigators **[ICIB Casebook, Attachment #4]**, a photocopy of the

citation issued **[ICIB Casebook, Pages 105-106]** and valid automobile insurance **[ICIB Casebook, Pages 108-109].** There were no transcripts for the interview.

ICIB investigators spoke with Witness [redacted], a deputy with the Los Angeles County Sheriff's Department. He said he was stopped by Subject Berk for allegedly speeding on August 25, 2016 but was subsequently cited for no current proof of insurance.

Witness [redacted] said Subject Berk initially asked to see his driver's license and insurance. Witness [redacted] informed Subject Berk he was a deputy and had a firearm in the car. When Witness [redacted] retrieved his insurance card, Subject Berk said never mind and he would give Witness [redacted] a break on the speeding ticket and instead cite him for no current proof of insurance.

Witness [redacted] did not ask Subject Berk to give him a break but thought it was odd he was cited for no current proof of insurance without being allowed the opportunity to show he had valid insurance coverage. Witness [redacted] accepted the citation and eventually went to court to show his proof of insurance. He paid a court fee of $25.

IAB NOTE: Refer to Exhibit A for a detailed account of Witness [redacted]'s interview with ICIB investigators including the audio recording and interview transcripts **[ICIB Casebook, Attachment #4 and Pages 183-188]**, a photocopy of the citation issued **[ICIB Casebook, Pages 110-111]** and valid automobile insurance **[ICIB Casebook, Pages 116]**.

ICIB investigators spoke with Witness [redacted], a deputy with the Los Angeles County Sheriff's Department. She said she was stopped by Subject Berk for allegedly speeding on September 1, 2016 but was subsequently cited for no current proof of insurance.

Witness [redacted] said Subject Berk asked for her driver's license, vehicle registration and automobile insurance. She took her driver's license out of her wallet and retrieved her vehicle registration and automobile insurance from a folder she kept in her glove box. Subject Berk told her not to give him the insurance information. She asked Subject Berk why he did not want to see her insurance information. Subject Berk told her he just wanted to see her registration.

Subject Berk walked away with her driver's license and registration and came back with a citation for no current proof of insurance. Witness [redacted] asked Subject Berk why he was citing her for no current proof insurance when she had proof of insurance. Subject Berk told her if he looked at her insurance information, he would have to cite her for speeding instead of no insurance. Witness [redacted] requested Subject Berk cite her for the violation he pulled her over for.

Subject Berk told Witness [redacted] he had discretion to cite her for whatever he wanted then told her if she were on patrol, she would know how it worked. She did not want to be argumentative so she signed the citation and left the scene. She went to the assigned courthouse to show her proof of insurance and discovered Subject Berk had made the citation "non-correctable." The court clerk was familiar with Subject Berk, and because Witness [redacted] was a deputy with valid proof of insurance, the citation was made correctable. Witness [redacted] paid $25 in court fees versus the non-correctable $925 fee.

> **IAB NOTE:** Refer to Exhibit A for a detailed account of Witness [redacted]' interview with the Department's ICIB investigators including the audio recording and interview transcripts **[ICIB Casebook, Attachment #4 and Pages 205-222]**, a photocopy of the citation issued **[ICIB Casebook, Pages 200-201]** and valid automobile insurance card **[ICIB Casebook, Pages 202-204]**.

ICIB investigators spoke with Witness [redacted], a deputy with the Los Angeles County Sheriff's Department. He said he was stopped by Subject Berk for allegedly speeding on September 5, 2016 but was subsequently cited for no current proof of insurance.

Witness [redacted] said he identified himself as a deputy to let Subject Berk know he had weapons in the car. When he retrieved his insurance paperwork from the passenger side visor, the paperwork fell onto the seat. Witness [redacted] was not sure if Subject Berk saw his insurance paperwork as it fell on the seat and added it was never given to Subject Berk. Subject Berk went back to his motorcycle and returned with a citation for no current proof of insurance.

> **IAB NOTE:** Refer to Exhibit A for a detailed account of his interview with ICIB investigators including the audio recording and interview transcripts **[ICIB Casebook, Attachment #4 and Pages 189-197]**, a photocopy of the citation **[ICIB Casebook, Pages 120-121]** and valid automobile insurance **[ICIB Casebook, Page 123].**

ICIB investigators spoke with Witness [redacted], spouse of a sergeant with the Los Angeles County Sheriff's Department. She said she was stopped by Subject Berk for allegedly speeding on September 27, 2016 but was subsequently cited for no current proof of insurance.

During the above referenced interview, Witness [redacted] recounted her encounter with Subject Berk. She stated Subject Berk told her he pulled her over for speeding. During the traffic stop, he asked for her license, registration and proof of insurance. She gave Subject Berk all the documents.

Subject Berk went back to his motorcycle and was there long enough for her to assume he was writing her a citation. She pulled out her husband's business card and when Subject Berk returned to her window with what appeared to be a citation, she showed him her husband's business card. After Subject Berk asked a few questions about her husband, he told her he was going to cite her for no current proof of insurance instead of speeding to do her favor and save her money on fees. Witness [redacted] asked Subject Berk why he would cite her for no proof of insurance when she had provided him with the proof. He told Witness [redacted] if she wanted the speeding ticket he would give it to her but she said no.

> **IAB NOTE:** Refer to Exhibit A for a detailed account of Witness [redacted]'s interview with ICIB investigators including the audio recording and interview transcripts **[ICIB Casebook, Attachment #4 and Pages 254-264]**, a photocopy of the citation **[ICIB Casebook, Pages 96-97]**, and a photocopy of the valid automobile insurance **[ICIB Casebook, Page 129]**.

ICIB investigators spoke with Witness [redacted], a lieutenant with the Los Angeles County Sheriff's Department. He said he was stopped by Subject Berk for allegedly speeding on October 1, 2016 but was subsequently cited for no current proof of insurance.

Witness [redacted] immediately identified himself as a lieutenant with the Department by showing Subject Berk his badge and identification card. Subject Berk asked for Witness [redacted]'s driver's license, vehicle registration and automobile insurance. Witness [redacted] provided the requested documents to Subject Berk who then walked away from Witness [redacted]'s vehicle.

Subject Berk noticed the insurance card was expired and noted his observations to Witness [redacted]. Witness [redacted] exited his vehicle to get his current insurance out of his trunk; however, Subject Berk told Witness [redacted] to stop, relax and get back in his vehicle.

When Subject Berk returned to Witness [redacted]'s vehicle, he had a citation for no current proof of insurance. Subject Berk did not allow Witness [redacted] to retrieve the current insurance card out of his trunk. Subject Berk told Witness [redacted] he was getting a break by not citing him for speeding so Witness [redacted] signed the citation without further discussion.

> **IAB NOTE:** Refer to Exhibit A for a detailed account of Witness [redacted]'s interview with ICIB investigators including the audio recording and interview transcripts **[ICIB Casebook, Attachment #4 and Pages 163-171]**, a photocopy

of the citation **[ICIB Casebook, Pages 130-131]**, and a photocopy of a valid automobile insurance card **[ICIB Casebook, Pages 172-173]**.

ICIB investigators spoke with Witness [redacted], a lieutenant with the Los Angeles Police Department. She said she was stopped by Subject Berk for allegedly speeding on October 21, 2016 but was subsequently cited for no current proof of insurance.

A review of the body worn camera footage depicted Subject Berk contacting Witness [redacted] during a traffic stop. He approached the vehicle on the passenger side and advised Witness [redacted] she was observed driving over the speed limit. He requested Witness [redacted]'s driver's license which she retrieved from her wallet.

As Subject Berk accepted Witness [redacted]'s driver's license, he inquired about an item in Witness [redacted]'s left hand. She advised Subject Berk the item was her Los Angeles Police Department work identification card and showed him the card.

Subject Berk asked for Witness [redacted]'s vehicle registration card. She provided the card to him then he walked back to his motorcycle to generate a citation. He returned to Witness [redacted]'s vehicle and advised her the Department requires him to document all of his traffic stops and how he documented the stops was up to him; therefore, he would give her a warning for speeding but cite her for having no insurance.

When Witness [redacted] started looking for her insurance card, Subject Berk stopped her saying if he looked at her insurance card, he would have to cite her for speeding. He inquired of Witness [redacted] if she thought it would be better to get a "fix it" ticket rather than have a speeding ticket on her record. She acquiesced and signed the ticket without further discussion.

> **IAB NOTE:** Refer to Exhibit A for a detailed account of Witness [redacted]'s interview with ICIB investigators including the audio recording and interview transcripts **[ICIB Casebook, Attachment #4 and Pages 224-231]**, a body worn camera video of the traffic stop **[ICIB Casebook, Attachment #1, File 0572]** a photocopy of the citation **[ICIB Casebook, Pages 32-33]**, and a photocopy of a valid automobile insurance card **[ICIB Casebook, Page 223.]**

ICIB investigators spoke with Witness [redacted], an officer with the Los Angeles Police Department. He said he was stopped by Subject Berk for allegedly speeding on October 1, 2016 but was subsequently cited for no current proof of insurance.

During the above referenced interview, Witness [redacted] recounted his encounter with Subject Berk. Witness [redacted] stated Subject Berk told him he was pulled over for speeding. Subject Berk asked Witness [redacted] if the vehicle was registered to him and for his driver's license. Subject Berk asked why Witness [redacted] was in uniform.

Witness [redacted] explained he was headed home from work. Subject Berk did not ask Witness [redacted] to show his vehicle registration nor proof of insurance.

Subject Berk went to his motorcycle and returned quickly with a citation. Subject Berk told Witness [redacted] the Department required him to document any traffic stops; therefore, he was citing Witness [redacted] for no current proof of insurance. Witness [redacted] did not inquire why he was being cited without having the opportunity to provide proof of insurance. He was tired and ready to go home.

> **IAB NOTE:** Refer to Exhibit A for a detailed account of Witness [redacted]'s interview with ICIB investigators including the audio recording and interview transcripts **[ICIB Casebook, Attachment #4 and Pages 244-251]**, a photocopy of the citation **[ICIB Casebook, Pages 34-35]**, and a photocopy of a valid automobile insurance card **[ICIB Casebook, Page 243.]**

ICIB investigators spoke with Witness [redacted], spouse of a deputy with the Los Angeles County Sheriff's Department. She said she was stopped by Subject Berk for allegedly speeding on November 14, 2016 but was subsequently cited for having no current proof of insurance.

During the above referenced interview, Witness [redacted] recounted her encounter with Subject Berk. Subject Berk told her he pulled her over for speeding. He asked for her driver's license and vehicle registration. She provided Subject Berk with the items requested but before he returned to his motorcycle to run her information, Witness [redacted] told Subject Berk her husband was a deputy.

While Subject Berk was at his motorcycle, Witness [redacted] attempted to pull her insurance card up on her cell phone using the "Geico" application. The application did not work quickly and when Subject Berk returned to her window, he asked for her proof of insurance. She explained she was waiting for the application to pull up on her cell phone. After approximately 20 seconds, Subject Berk told her he was citing her for no current proof of insurance.

> **IAB NOTE:** Refer to Exhibit A for an audio recording of Witness [redacted]'s interview with ICIB investigators **[ICIB Casebook, Attachment #4]**, and a photocopy of the citation **[ICIB Casebook, Pages 136-137.]** There are no transcripts for this interview.

ICIB investigators presented their findings and filed a criminal complaint with the Los Angeles County District Attorney's Office. On February 24, 2021, Subject Berk pled "No Contest" and was convicted of four (4) felony counts of violating section 118.1 of the California Penal Code. His probation and sentencing hearing is set for February 24,

2023 **[EXHIBIT C, Minute Order, Superior Court of the State of California, County of Los Angeles, DA Case #BA482714]**.

Based on the statements made by the witnesses, victims and the evidence submitted by ICIB investigators, coupled with the fact Subject Berk admitted to violating section 118.1 of the California Penal Code, no additional interviews were conducted.

ADDITIONAL INFORMATION:

Santa Clarita Valley Station Traffic Sergeant Shoemaker provided ICIB investigators with a citation report for Subject Berk listing 541 citations issued between January 2, 2016 and November 30, 2016. Of the 541 citations, 72 citations were documented as having section 16028(a) of the California Vehicle Code as the sole violation. Of the 72 persons cited, 16 were associated with law enforcement.

The six victims identified below were not interviewed by ICIB investigators:

- [redacted] - License [redacted], Los Angeles County Sheriff's Department **[ICIB Casebook Pages 99-101]**
- [redacted] - License [redacted], Los Angeles Police Department **[ICIB Casebook Pages 117-119]**
- [redacted] - License [redacted], Pasadena Police Department **[ICIB Casebook Pages 124-126]**
- [redacted] - License [redacted], Los Angeles County Probation Department **[ICIB Casebook Pages 133-135]**
- [redacted] - License [redacted], Los Angeles Police Department **[ICIB Casebook Pages 139-141]**
- [redacted] - License [redacted], Los Angeles Police Department **[ICIB Casebook Pages 142-144]**

During the course of this investigation, Subject Berk was found to have knowingly made untruthful statements under oath by submitting citations alleging the witnesses and victims did not show proof of insurance at the time of the incidents which resulted in the willful violation of state laws.

Subject Berk retired from the Los Angeles County Sheriff's Department on December 23, 2019.